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June 2, 1951
Op. No. 51-151

Major General A. M. Tuthill
Arizona National Guard
747 West Van Buren Street
Phoenix, Arizona

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Dear General Tuthill:

We have your letter of April 6, together with a letter written to you by Lt. Col. Michael E. Curry, requesting that you submit for our opinion the following questions:

- "a. Whether the State of Arizona accepts the present employees hired by the State and paid entirely out of Federal funds as State employees.
- b. Whether these employees will receive benefits of social security under the State Plan or the National Plan.
- c. If so, is it agreeable to the State of Arizona to provide the necessary matching funds to pay for the benefits involved."

We are going to assume for the moment that these employees are State employees.

Answering Question b., it is our opinion these employees will not receive Social Security benefits under the State plan, inasmuch as all State employees are covered by a State Retirement plan and thereby precluded from the Social Security Act Amendments of 1950 extended Social Security to State and municipal employees. It is stated at page 598, Laws of 81st Congress, Second Session, Chapter 809:

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**"Exclusion of Positions Covered by
Retirement Systems**

(d) No agreement with any State may be made applicable (either in the original agreement or by any modification thereof) to any service performed by employees as members of any coverage group in positions covered by a retirement system on the date such agreement is made applicable to such coverage group."

In answer to Question c., the employees will not receive benefits of Social Security under the State plan, thus the question of matching funds does not arise.

If it should be determined under Question a. that the employees hired by the State and paid entirely out of Federal funds are Federal employees, then of course there would be no question of State matching funds.

We trust that this answers your inquiry in connection with this matter.

Very truly yours,

FRED O. WILSON
Attorney General

KENT A. BLAKE
Assistant Attorney General

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